

acquisition of stock in a licensee. Rather, the Commission found that the Treasury Department determination was evidence to be given weight. As case precedent establishes, "the Commission's concern is not violations of law or other misconduct in the abstract, but rather the extent to which the misconduct provides a useful 'predictive judgment' about future licensee compliance." Focus Television Co., 98 F.C.C.2d 546 (Rev. Bd. 1984), modified, 1 FCC Rcd 1037 (1986).

39. Secondly, Scripps Howard argues that even if the Lowery decision retained effect following vacatur, the Commission has already considered the Lowery case in connection with the license renewal application filed by WMC-TV. In support of this argument, Scripps Howard attaches a copy of what appears to be an exhibit to its renewal application and two amendments. However, while the first amendment, dated May 6, 1987, reports the fact that judgment was entered for Lowery and the court awarded Lowery back pay, compensatory damages, punitive damages and attorney's fees, the scathing language of the court's decision is not reported. Instead, Scripps Howard merely states that it filed a Motion requesting the court to amend its findings of fact and vacate its judgment on the basis that the court's Memorandum and Order contained clearly erroneous findings of fact.

40. In any event, Scripps Howard is wrong in asserting that the Commission cannot revisit the Lowery judgment because it granted the WMC-TV renewal application. This argument has previously been rejected by the Commission and the courts. See e.g., Seven Hills Television Co., 2 FCC Rcd 7336, 64 R.R.2d 274, 299 (Rev. Bd. 1987), as modified on denial of reconsideration,

FCC 88R-10, released February 25, 1988 and cases cited therein ("Neither the licensee's record nor the Commission's routine grant of their renewal applications over the past twenty (20) years is relevant in determining whether these stations were under alien control in violation of the statute. . . . [N]o regulatee has a vested interest in perpetuity in past Commission action -- or inaction.").

41. The Mass Media Bureau advances a different argument -- namely, that the findings in the WMC-TV case are based on conduct which occurred prior to 1981 and therefore the employment discrimination is outside the ten-year limitation period discussed in Character Qualifications, 102 F.C.C.2d 1179, 1229 (1986). However, the Bureau's argument has previously been


i.e., when a plea or judgment occurs. See also The Seven Hills Television Co., supra.

**Conclusion**

In sum, for the reasons set forth above, the requested issues should be added against Scripps Howard Broadcasting Company.

Respectfully submitted,

**FOUR JACKS BROADCASTING, INC.**

By:   
Martin R. Leader  
Kathryn R. Schmeltzer  
Gregory L. Masters

Counsel to Four Jacks  
Broadcasting, Inc.

Fisher, Wayland, Cooper  
and Leader  
1255 23rd Street, N.W.  
Suite 800  
Washington, D.C. 20037  
(202) 659-3494

Dated: June 8, 1993

3070-014.R12



***CARL T. JONES***  
**CORPORATION**

**STATEMENT OF HERMAN E. HURST, JR.  
IN SUPPORT OF AN OPPOSITION TO A MOTION  
TO ENLARGE ISSUES RELATED TO TOWER SITE  
IN MM DOCKET NO. 93-94**

Prepared for: Four Jacks Broadcasting, Inc.

I am a Radio Engineer, an employee in the firm of Carl T. Jones Corporation with offices located in Springfield, Virginia.

My education and experience are a matter of record with the Federal Communications Commission.

This office has been authorized by Four Jacks Broadcasting, Inc. ("Four Jacks"), applicant for a new VHF television station to serve Baltimore, Maryland, on Channel 2+, to prepare this statement in support of an *Opposition to a Motion to Enlarge Issues Related to Tower Site* in MM Docket No. 93-94. The Four Jacks Application for Construction Permit (FCC File No. BPCT-910903KE) is mutually exclusive with the pending application of Scripps Howard Broadcasting Company ("Scripps Howard") for renewal of its license for WMAR-TV, Baltimore, Maryland (FCC File No. BRCT-910603KX).

On March 22, 1993, the Federal Communications Commission adopted the *Hearing Designation Order* ("HDO") in MM Docket No. 93-94 that designated the Four Jacks application and the Scripps Howard application for a comparative hearing to resolve

STATEMENT OF HERMAN E. HURST, JR.  
OPPOSITION TO MOTION FOR ENLARGEMENT OF ISSUES  
PAGE 2

the mutual exclusivity between the applications. The HDO in MM Docket No. 93-94 was released April 1, 1993. Scripps Howard filed a *Motion to Enlarge Issues Related to Tower Site* ("Scripps Howard Motion") in the instant proceeding on May 13, 1993. From an engineering standpoint, the Scripps Howard Motion requests issues related to the suitability and the height of the Four Jacks proposed support structure.

I. Four Jacks' Technical Proposal, Revisited

As stated in the original application, the tower must be modified to accommodate the top-mounted Channel 2+ antenna in order to maintain the tower's authorized airspace clearance. The tower reconfiguration would involve the relocation of the WPOC(FM) 2-bay antenna and, if necessary, physical modifications to the support structure to insure its structural integrity.

As has been clearly established, Four Jacks proposes to maintain the existing structure's authorized airspace of 709 feet above ground level (216.1 meters) and 1249 feet above mean sea level (380.7 meters). The vertical aperture of the proposed Channel 2+ antenna is 104 feet, and the height allowance for the tower beacon is 3 feet. As a result, the tower must be shortened to 602 feet (i.e.,  $709 - 104 - 3 = 602$  feet) in order to accommodate the proposed antenna and maintain the tower's authorized airspace. No change is or was proposed in the authorized height of the existing tower structure.

STATEMENT OF HERMAN E. HURST, JR.  
OPPOSITION TO MOTION FOR ENLARGEMENT OF ISSUES  
PAGE 3

II. Site Suitability

Scripps Howard contends that the tower proposed by Four Jacks is "unsuitable" to support the Channel 2+ transmitting antenna. In support of this contention, the Scripps Howard Motion relies heavily upon a structural analysis, conducted by Vlissides Enterprises, Inc., based wholly upon the erroneous assumption that the Channel 2+ transmitting antenna will be top-mounted at the 666-foot level of the tower (this assumption would require an overall structure height of 770 feet:  $666 + 104 = 770$  feet). As demonstrated in its original application and reiterated above, this is not and never was Four Jacks' proposed tower configuration. Consequently, the Vlissides structural analysis contained in Scripps Howard's Motion is both erroneous and without merit with regard to Four Jacks' proposed site utilization.

In any event, the results of a structural analysis of the proposed tower configuration at this time, even if performed correctly, are irrelevant. Four Jacks has stated in its original Application for Construction Permit, and reemphasized in the numerous pleadings associated with its application, that tower modifications will be conducted as necessary to accommodate the Channel 2+ transmitting antenna and associated equipment.<sup>1</sup> In addition, upon grant of the Four Jacks construction permit application, a complete structural analysis of the authorized tower configuration

---

<sup>1</sup> Four Jacks can attest to this fact because the tower is owned by Cunningham Communications, Inc., an entity owned by the Four Jacks principals.

STATEMENT OF HERMAN E. HURST, JR.  
OPPOSITION TO MOTION FOR ENLARGEMENT OF ISSUES  
PAGE 4

considering the final design parameters/equipment will be performed to assure the structural integrity of the existing tower structure. As routinely required in the implementation of an FM or TV construction permit, any necessary tower reinforcement, guy replacement, or tower modification will be performed at that time.

Scripps Howard also contends that the proposed site is "unsuitable" because the WPOC(FM), Baltimore, Maryland, FM transmitting antenna and "over eighty (80) licensees" must be relocated to allow for the installation of the Channel 2+ transmitting antenna. Actually, the required reconfiguration will consist of relocating only two (2) whip antennas and the 2-bay FM antenna. When Four Jacks is awarded the Channel 2+ construction permit, the three (3) affected tenants will be notified by Cunningham Communications, Inc., the tower owner, that their antennas must be relocated or repositioned. Appropriate applications for such changes, when finalized, will be submitted to the Commission. The actual facilities modification will not begin until all authorities are issued. This is the normal, accepted method for undertaking changes at multi-user/shared tower sites.

It is submitted that the site specified by Four Jacks is available and suitable for its proposed use.

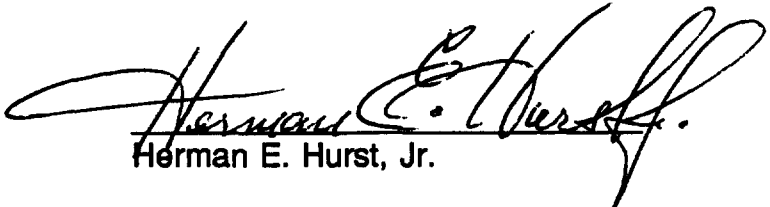
STATEMENT OF HERMAN E. HURST, JR.  
OPPOSITION TO MOTION FOR ENLARGEMENT OF ISSUES  
PAGE 5

III. Tower Height

Finally, Scripps Howard claims that Four Jacks misrepresented the height of the proposed tower structure. This claim is also completely false. As stated above, Four Jacks has clearly and repeatedly stated its intention to modify the existing structure and install the new Channel 2+ transmitting antenna such that the authorized height of the existing structure does not change (the airspace approval for the height of 1249 feet AMSL was originally granted on April 2, 1968, and reaffirmed on February 14, 1992, by the Federal Aviation Administration).<sup>2</sup>

This statement was prepared by me or under my direct supervision and is believed to be true and correct.

DATED: May 25, 1993



Herman E. Hurst, Jr.

---

<sup>2</sup> Four Jacks has responded to the issue contained in the HDO as to "whether there is reasonable possibility that the tower height and location would constitute a hazard to air navigation." It is submitted that the Four Jacks response explicitly puts to rest any question regarding the "record height of the specified tower".

ATTACHMENT B

NEWTON A. WILLIAMS  
THOMAS J. RENNER  
WILLIAM P. ENGLEHART, JR.  
STEPHEN J. NOLAN \*  
ROBERT L. HAMLEY, JR.  
ROBERT S. GLUSHAKOW  
STEPHEN M. SCHENNING  
DOUGLAS L. BURGESS  
ROBERT E. CAMILL, JR.  
LOUIS G. CLOSE, II  
E. BRUCE JONES \*\*  
GREGORY J. JONES  
J. JOSEPH CURRAN, II

\*ALSO ADMITTED IN D.C.  
\*\*ALSO ADMITTED IN NEW JERSEY

LAW OFFICES  
**NOLAN, PLUMHOFF & WILLIAMS**  
CHARTERED  
SUITE 700, COURT TOWERS  
210 WEST PENNSYLVANIA AVENUE  
TOWSON, MARYLAND 21204-5340  
(410) 823-7800  
TELEFAX: (410) 298-2785

JAMES D. NOLAN  
(RETIRED 1980)  
J. EARLE PLUMHOFF  
(1940-1988)  
RALPH E. DEITZ  
(1948-1990)  
OF COUNSEL  
T. SAYARD WILLIAMS, JR.  
RICHARD L. SCHAEFFER  
WRITER'S DIRECT DIAL  
823- 7853

January 28, 1992

Arnold Jablon, Esquire  
Director  
Office of Zoning Administration  
and Development Management  
County Office Building  
Towson, Maryland 21204

Mr. John Reisinger  
Chief Building Engineer for  
Baltimore County Department  
of Permits and Licenses  
County Office Building  
Towson, Maryland 21204

Re: Request for Advisory Opinion Letter and Investigations

Gentlemen:

We serve as special counsel to Scripps Howard Broadcasting Company, the licensee of television station WMAR-TV in Baltimore, Maryland. In that connection, it has come to our attention that recently, Four Jacks Broadcasting, Inc. ("Four Jacks") has petitioned the Federal Communications Commission for a construction permit for Channel 2 in Baltimore. If the authorization were to be approved by the Commission, Four Jacks would use and operate a 666 foot, guyed tower that is located in the northwest quadrant of Route 40 West and North Rolling Road, known as 1200 North Rolling Road, Catonsville, Maryland. The tower's presence is based upon three known cases that a diligent search has disclosed, namely: Case No. 69-269RX; Case No. 75-181X; and Case No. 77-122SPH. Case No. 77-122SPH allowed an extension to 1009 feet, but this 15 year old special exception has never been utilized, and accordingly has lapsed under Section 502.3 of the Regulations. Nonetheless, a review of Four Jacks' application before the Federal Communications Commission indicates that they might need to increase the height of the tower.

It is our opinion that any increase in height over the present 666 feet would require: 1) A full County Review Group (CRG) meeting under the new rules and method; 2) A special hearing/special exception under all the tower rules in the Zoning Regulations and Development Regulations; and 3) Compliance with all state and federal requirements including FCC, FAA and all applicable environmental regulations.

Arnold Jablon, Esquire  
Mr. John Reisinger  
January 28, 1992  
page two

In addition to our review of tower height and zoning issues, a consultant was retained to evaluate the safety and structural integrity of the existing tower. A copy of the consultant's report by Vliissides Enterprises, dated January, 1992, is enclosed for your information. You will note that the consultant has concluded that "the tower legs are overstressed on the lower and upper 200 feet of the tower by as much as 140%" and that it is their expert opinion that due to the large overstress that is calculated in the tower legs "the subject tower is not adequately designed to support the Channel 2 antenna and its transmission lines...."

Furthermore, the consultant noted that significant icing of the tower and its guy cables, in addition to the wind loading capacities specified for Baltimore County will put the tower and the surrounding area in danger. Not only is the tower very close in proximity to residential areas, but also to a shopping center (tax map 94, p.106) and the Jehovah Witnesses property (tax map 94, p.114). In summary, according to the

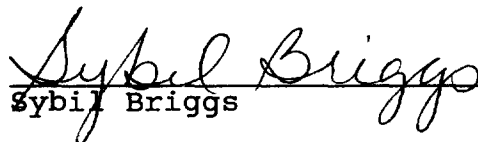
CERTIFICATE OF SERVICE

I, Sybil Briggs, a secretary in the law firm of Fisher, Wayland, Cooper and Leader, do hereby certify that true copies of the foregoing "REPLY TO OPPOSITION TO PETITION TO ENLARGE ISSUES AGAINST SCRIPPS HOWARD BROADCASTING COMPANY" were sent this 8th day of June, 1993, by first class United States mail, postage prepaid, to the following:

\*Honorable Richard L. Sippel  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W., Room 212  
Washington, D.C. 20554

\*Norman Goldstein, Esq.  
\*Robert Zauner, Esq.  
Hearing Branch Enforcement Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N.W.  
Room 7212  
Washington, D.C. 20554

Kenneth C. Howard, Jr., Esq.  
Leonard C. Greenebaum, Esq.  
David N. Roberts, Esq.  
Baker & Hostetler  
1050 Connecticut Ave.  
Suite 1100  
Washington, D.C. 20036  
Counsel for Scripps Howard Broadcasting Company

  
Sybil Briggs

\*By Hand